



Public Private Partnerships

October 4, 2013



Discussion Items

- **Legislative History**
- **Application History**
- **Public Private Partnership (PPP) Policy**
 - Current Policy
 - Current Procurement Process
 - Applicability of Policy Document
 - Proposed Revisions to Policy Document
 - Unsolicited Proposals
- **Contract Documents**
 - Contents
 - Applicability



Legislative PPP History

Session Law 2006-230	Authorized Department to enter into agreements with private entities <u>to finance</u> the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges.
Session Law 2007-439	Clarifies that agreements may be made with private entities for <u>transportation infrastructure projects</u> . Reporting requirements also established. Authorized the use of Public Private Partnerships for two pilot projects for traveler information services at rest areas and two pilot projects for litter removal.
Session Law 2008-164	Clarified the Department's authority to enter into agreements to <u>plan, design, develop, acquire, construct, equip, maintain, and operate</u> highways, roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines. Requires that construction contracts pursuant to a PPP arrangement be competitively bid.



Legislative PPP History

Session Law 2012-184	Provides flexibility for proposal, performance, and payment security requirements, as well as developer assignment rights, for one pilot project. Enables the Department to fix, charge, revise, and collect tolls and to assign that ability to a third party developer for one pilot project.
Session Law 2013-183 (HB817)	Permits up to three PPP projects, defines requirements for use of excess revenue, limits term of agreements, requires a public hearing to address tolling methodology, and establishes reporting requirements prior to contract execution.



NCDOT PPP History

Sponsorships

- Rest Area Staffing and Maintenance
- Litter Removal

Major Capital Improvements

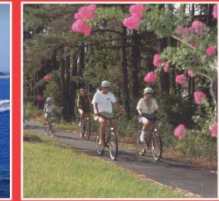
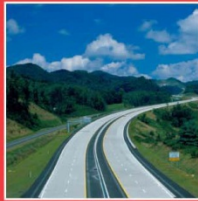
- Mid-Currituck Bridge (Pre-Development Agreement)
- I-77 Managed Lanes
 - Comprehensive Bidder Interaction
 - Numerous key decisions regarding risk allocation, revenue sharing, tolling, operations, leveraging existing resources, innovation, revenue risk, and performance based contract specifications



PPP Policy

Current Policy and Procedures

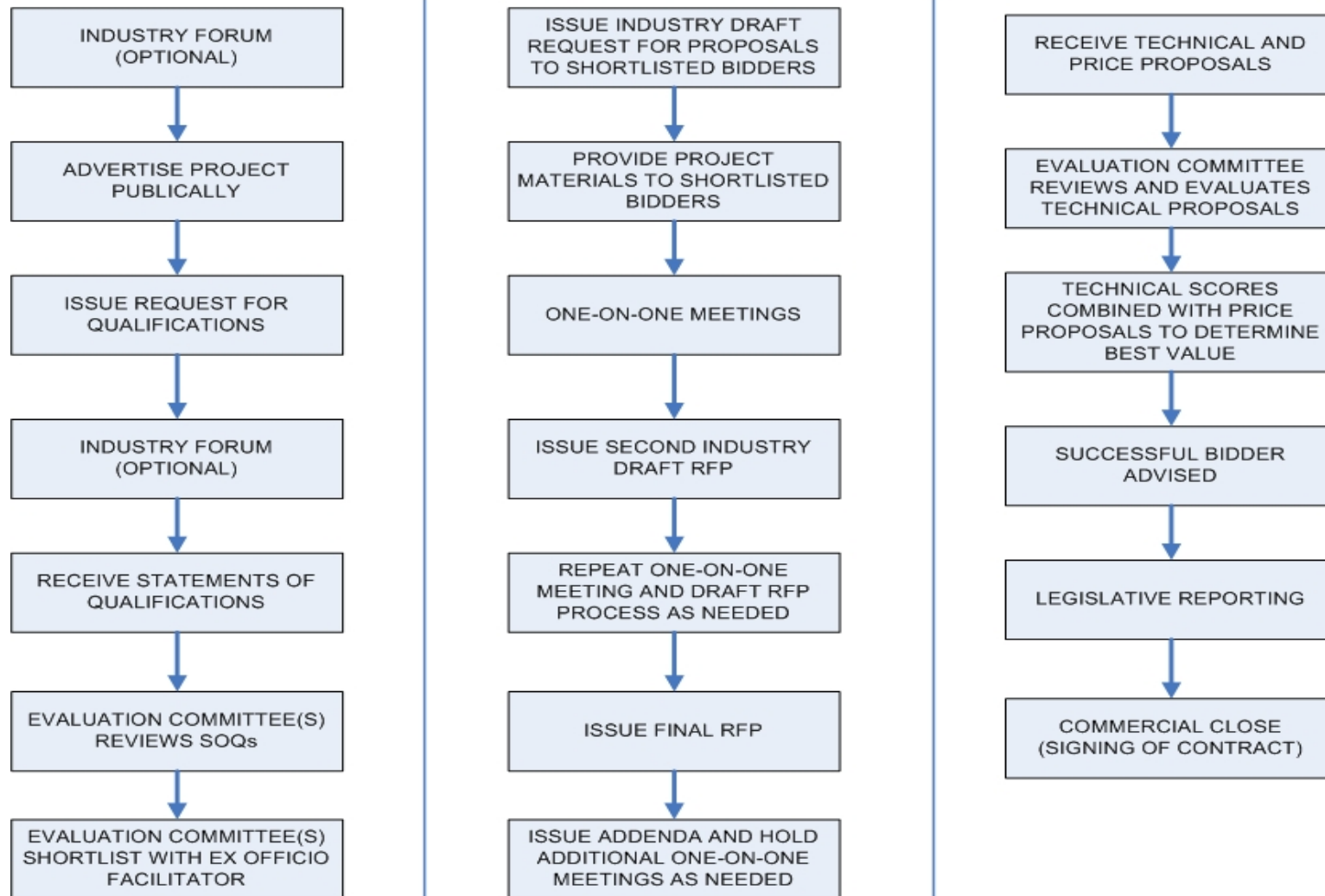
- Adopted by Board in October 2012 (Exhibit A)
- Developed following review of other key states' policies, that for NCTA, and the NCDOT Design-Build Policy and Procedures
- Notable input from Carolinas AGC and ACEC during development
- Policy includes:
 - Brief legislative history
 - Assignment of NCDOT roles and responsibilities, including those of oversight committee
 - Procurement process, including public advertisement, typical Request for Proposals content, evaluation process and committees, and successful bidder determination



SHORTLISTING

BIDDER INTERACTION

PROPOSAL STAGE





Applicability of PPP Documents

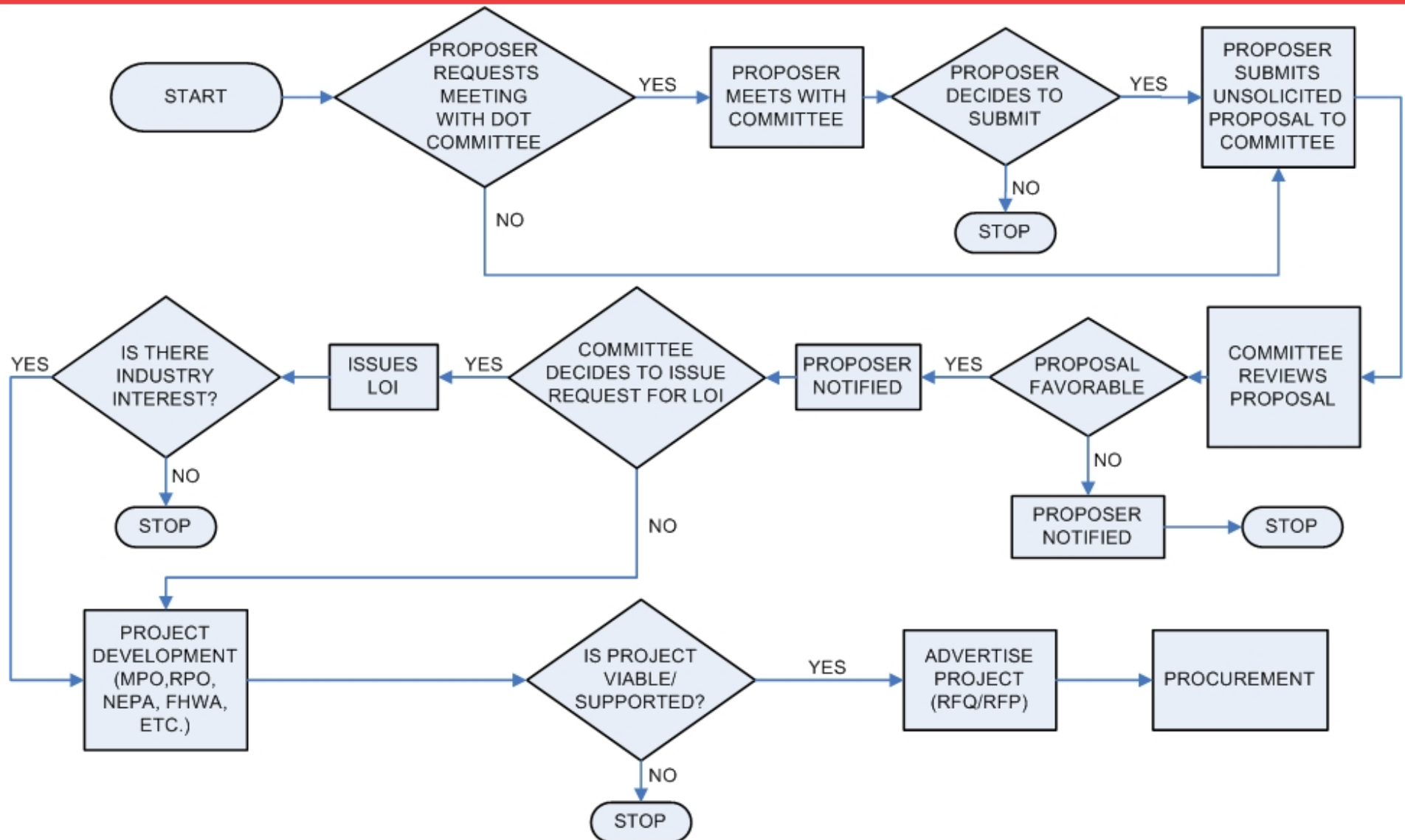
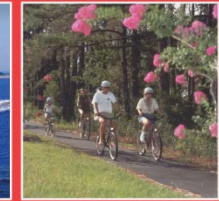
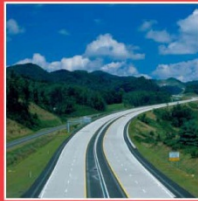
Policy and Procedures (Exhibit A):

- Guiding document for a broad approach of PPP and sponsorship arrangements
- Universally applied to all procurements
- Not intended to be revised on a project-by-project basis



Proposed Revisions to PPP Policy

- Revisions unrelated to current procurements
- Modification to reflect Session Law 2013-183
- Outlines process for entertaining unsolicited proposals to include:
 - Process for submittals
 - Roles and process for NCDOT consideration
 - Disposition
 - Incentives for submission (inclusion on shortlist of bidders)
- Unsolicited proposals are proposals for ideas, not for contract
- NCDOT reserves right to reject any unsolicited proposal
- NCDOT reserves right to issue a Request for Letters of Interest
- NCDOT will publicly advertise a competitive procurement for any project resulting from an unsolicited proposal





Feedback on Revisions

- Joint AGC/ACEC/NCDOT Subcommittee serves as primary forum
- Minor comments from ACEC to adjust language related to:
 - Clarity on who can submit
 - Minimum qualifications of the submitting entity
 - Intellectual property rights
- Will likely proceed to the Board of Transportation for consideration later this year



PPP Contract Documents

Contract documents for major transportation capital projects will typically consist of four parts (Exhibit B):

- Instructions to Proposers
 - Governs project-specific procurement process, rules, communications, proposal requirements, and proposal evaluation
 - Non-contractual with purpose expiring with the execution of the Comprehensive Agreement
- Comprehensive Agreement
 - Contractual requirements to apply throughout term of contract
 - Includes all compensation terms, tolling policies, revenue sharing, long-term risk allocation, schedule, “handback” requirements, NCDOT rights and reservations, insurance requirements, warranties, liquidated damages payable to NCDOT, default, and termination for convenience
 - Addresses long-term legal, commercial, and financial issues



PPP Contract Documents

- Technical Provisions
 - Technical requirements including design, construction, maintenance, and operations of a transportation capital improvement
 - Applies mostly to initial design and construction activities but also governs long-term rehabilitation, public information, and management responsibilities throughout term of contract
- Specifications, Standards, Manuals and Guidelines
 - Itemization of all NCDOT, federal, and other pertinent documents that govern design, construction, and maintenance that are incorporated into contract by reference



Applicability of PPP Documents

Contract Documents (Exhibit B)

- List of contract components serves as a template for future PPP projects
- Provides a list of ingredients to contemplate and adjust on a project-by-project basis
- Examples can range from short term to long term, technical to financial:
 - *Short Term* risks of pre-existing hazardous materials or unknown archaeological sites
 - *Long Term* long-term maintenance and rehabilitation, and what is the expected condition of the facility at “handback”
 - *Technical* third party approvals such as permitting, utility relocations, railroad agreements, etc.
 - *Revenue* risk of revenue assigned to public or private sector, or shared
 - *Financial* risks and benefits of public subsidy, compensation terms, and revenue sharing



Applicability of PPP Documents

Contract Documents (Exhibit B)

- Proper risk allocation *identify, mitigate, assign.*
- Critical to assign risk to the party best able to manage it on a project-by-project basis.
- Balance “contingency bidding” versus adjustment clauses (i.e. risk sharing mechanisms such as provisions for “compensation events” or “relief events”)
- Exhibit B provides a list of standard contract topics that should be universally considered for future PPP projects.
- Caution in using standard contract language so as not to preclude the effective risk allocation for a given project.